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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Baker Donelson Bearman Caldwell & Berkowitz PC
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EXAMINER	
STEPHENS III, JOSE S	

ART UNIT	PAPER NUMBER
3728	

MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/566,093	LANCESSEUR ET AL.	
	Examiner	Art Unit	
	JOSE S. STEPHENS III	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *10 February 2009*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-17,19,20 and 23-35* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-17,19,20 and 23-35* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *29 November 2006* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☒ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *3/26/2009*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 02/10/09 has been entered.

This Office Action acknowledges the applicant's amendment filed 10 February 2009. Claims 1-17, 19, 20, and 23-35 are pending in the application; and claims 18, 21, and 22 have been cancelled.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-17, 19, 20, 23-31, 34, and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hekal (EP 0 824 480) in view of Simpson et al. (US Patent 6,000,550).

With respect to claim 1, 28, 30, and 31, figure 1 of Hekal teaches a desiccant container 01, with increased tightness, made of thermoplastic polymer materials (see [0023], lines 33-50), for the packaging of products sensitive to ambient moisture, presented in processed or unprocessed forms comprising a tubular casing 12 forming a product packaging zone 201, the tubular casing being closed at a first end by a base

and open at a second end (see figure 1), sealing means 14 at the second end of the tubular casing, connections means 16 disposed between the sealing means and the tubular casing, packaging means of a desiccant agent 200 placed on an inner face of the sealing means (see [0025], lines 17-36), a collar-type outer peripheral stop (see figure 1), disposed in a vicinity of the open end of the tubular casing, the sealing means being supported in a closed position thereof, wherein the sealing means of the open end of the tubular casing comprises a cap-lid coaxial 14 with the tubular casing, the cap-lid comprising an upper end wall and two concentric tubular peripheral walls (see figure 1) comprising one inner wall 74 and one outer wall 87, the inner and outer wall forming together a peripheral groove (groove between inner and outer wall) having walls distanced from each other to cover, when the sealing means is closed, a peripheral wall of the open end of the tubular casing up to the outer peripheral stop, and the connection means between the tubular casing and the sealing means comprise a mechanical hinge ensuring the precision of closure. Hekal does not teach the mechanical hinge being formed by a male part incorporated in the tubular casing and a female part incorporated in the cap-lid, the male part comprising two bracket plates connected to each other by a rotation axis, and the outer wall of the peripheral groove being rendered discontinuous by notches formed to house the bracket plates. However, figures 2A, 3, and 7 of Simpson et al. teaches a mechanical hinge that comprises a male part (see figure 7) and a female part (see figure 3), the male part comprising two bracket plates (82 and 84) connected to each other by a rotation axis 88, and notches (see figure 3) formed to house the bracket plates. When there is a design need or market pressure to solve a

problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the hinge of Hekal by incorporating the hinge components of Simpson et al. to allow the cap-lid to be removed from the tubular casing.

With respect to claim 2, figure 1 of Hekal teaches a first surface-to-surface type peripheral tightness zone is established between the outer wall of the peripheral groove and an outer face of the wall of the second end of the tubular casing.

With respect to claim 3, figure 1 of Hekal teaches a second surface-to-surface type peripheral tightness zone is created between a peripheral base of the peripheral groove and a peripheral edge of the second end of the tubular casing.

With respect to claim 4, figure 1 of Hekal teaches a base of the peripheral groove has a cross-section that is the same as a cross-section of the peripheral edge of the second end of the casing.

With respect to claim 5, figure 1 of Hekal teaches the cross-sections comprise a sharp angle.

With respect to claim 6, figure 1 of Hekal teaches the cross-sections comprise an arc of a circle.

With respect to claim 7, figure 1 of Hekal teaches a peripheral edge of the second end of the casing is in the prolongation of the casing.

With respect to claim 8, figure 1 of Hekal teaches a peripheral edge of the second end of the casing protrudes from the casing.

With respect to claim 9, figure 1 of Hekal teaches the distance between the inner and outer walls of the groove is at least equal to the thickness of the tubular casing.

With respect to claim 10, figure 1 of Hekal teaches a third surface-to-surface type peripheral tightness zone is established between an inner surface of the inner wall of the peripheral groove and an inner surface of the second end.

With respect to claim 11, figure 1 of Hekal teaches the contact height of the third surface-to-surface type peripheral tightness zone extends from a lower end of the inner wall to a base of the groove.

With respect to claim 12, figure 1 of Hekal teaches the height of the inner wall of the groove is at least equal to the height of the outer wall of the groove.

With respect to claims 13 and 14, figure 1 of Hekal does not teach an inner surface of the inner wall comprises an annular peripheral protuberance that is engaged into a corresponding peripheral groove placed on the inner wall of the second end of the casing. Official Notice is taken that it is old and conventional to provide containers with protuberances that are engaged with grooves. Therefore it would have been obvious to one having ordinary skill in the art at the time of invention in view of the Official Notice to provide variety an inner surface of the inner wall comprises an annular peripheral protuberance that is engaged into a corresponding peripheral groove placed on the inner wall of the second end of the casing to provide a secure and moisture proof seal.

With respect to claim 15, figure 1 of Hekal teaches a fourth surface-to-surface type peripheral tightness zone is established between a plane lower edge of the outer wall of the groove and a plate of the outer peripheral stop.

With respect to claim 16, the combination of Hekal and Simpson et al. disclose the claimed invention except for the depth of the peripheral groove is from 45% to 95% of the thickness of the cap-lid measured on the outer wall of the groove. It would have been an obvious matter of design choice to modify the depth of the peripheral groove, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

With respect to claim 17, figure 1 of Hekal teaches the outer wall of the peripheral groove is continuous.

With respect to claim 19, figure 1 of Hekal teaches the cap-lid is equipped with a gripping visor.

With respect to claim 20, figure 1 of Hekal teaches an inner face of the outer wall of the groove and an outer face of the outer wall of the tubular casing are equipped with snap-on means 63.

With respect to claim 23, figure 7 of Simpson et al. teaches the rotation axis is prolonged beyond both bracket plates by protruding ends (90 and 92).

With respect to claim 24, figures 3 and 7 of Simpson et al. teaches the female part of the hinge, comprises two bracket plates (32 and 34) placed at a distance with respect to each other such that the plates can encompass the bracket plates of the

male part of the hinge, and a second groove 60 intended to receive the rotation axis, delimited by inner and outer walls (see figure 3).

With respect to claim 25, figure 5 of Simpson et al. teaches the bracket plates are equipped with orifices 44 to receive the protruding ends of the rotation axis.

With respect to claim 26, figure 2B of Simpson et al. teaches the length of the second groove intended to receive the rotation axis is less then the distance existing between the inner faces of the bracket plates.

With respect to claim 27, figure 1 of Hekal teaches the packaging means of a desiccant agent placed on the inner face of the cap-lid is tubular (see [0025], lines 17-36).

With respect to claim 29, Hekal teaches the tubular casing and the cap-lid are produced with different thermoplastic polymer compositions (see claims 6 and 9 of Hekal).

With respect to claim 34, all of the claimed structures are met as explained above. As to the method for packaging a product in a desiccant container, it is rendered obvious by the normal use of the desiccant container of Hekal.

With respect to claim 35, figure 1 of Hekal teaches the cap-lid forms four successive surface-to-surface type tightness peripheral zones forming four successive tightness barriers between the second end of the tubular casing and the cap-lid.

4. Claims 32 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hekal (EP 0 824 480) in view of Simpson et al. (US Patent 6,000,550) as applied to claim 1 above, and further in view of Taskis et al. (US Patent 5,947,274).

With respect to claims 32 and 33, Hekal-Simpson does not teach the desiccant agent is silica gels and molecular sieves. However, Taskis et al. teaches a desiccant agent that is molecular sieve powder (see column 11, lines 3-10). When there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use molecular sieve powder as the desiccant agent, as taught by Taskis et al., for the advantage of chemically absorbing the water in the container.

Response to Arguments

5. Applicant's arguments filed 10 February 2009 have been fully considered but they are not persuasive.

Applicant's argument that the written specification of Hekal fails to describe with clarity and the required specificity the exact structure that is disclosed in the container of Figure 1 is not persuasive. The drawings are part of the disclosure of an invention, thus rendering the previous argument moot. The structures of the container referenced in Figure 1 of Hekal can clearly be seen and would be able to teach one of ordinary skill in the art how to produce a container with those structures.

Applicant's argument that hinge design disclosed by Hekal teaches away from the two hinged, munlticomponent system disclosed by Simpson et al. is not persuasive.

The container and the insert does not have to be co-molded, the insert may take the form of a liner (see [0012]). The cap-lid and the tubular casing can still be mass produced if they are produced separately. The advantage of producing them separately is to allow the cap-lid to be removable from the tubular casing.

Applicant's argument that Hekal does not teach the outer wall of the peripheral groove is not rendered discontinuous by notches formed to house bracket plates is not persuasive. Figure 2A of Hekal clearly shows notches that house the bracket plates (80 and 82).

Applicant's argument that the combination of Hekal and Simpson et al. would not produce a container that comprises four surface-to-surface tight and peripheral contacts is not persuasive. Hekal discloses a container that comprises four surface-to-surface tight and peripheral contacts. The modification of the hinge will not prevent the container from being securely closed.

Conclusion

6. This is a continuation of applicant's earlier Application No. 10/566093. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JOSE S. STEPHENS III whose telephone number is 571-270-3797. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JILA M MOHANDESI/
Primary Examiner, Art Unit 3728

JSS
04/24/09